

The June 11, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Vice Chairman Matthew Zuker called the meeting to order at 6:30 p.m. with the following members present:

Matthew Zuker, Vice Chairman
 James S. DeCelle, Member
 Mary Jane Coffey, Member
 Susanne Murphy, Member (arrived at 7:06 p.m.)
 Timothy Foley, Associate Member

Also present:
 Ilana Quirk, Town Counsel

6:30 p.m. – Executive Session

Mr. Zuker declared that under G.L. c.30A, §21 (b)(3) and (4), the purpose of the executive session will be to discuss litigation strategy regarding litigation known as 5th Fairway Development, LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2009-09, involving a proposed 40B Comprehensive Permit for land on Baker Street as well as to discuss litigation strategy regarding litigation known as Barberry Homes LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee no. 2014-01; and Town of Walpole, et al. v. Barberry Homes, LLC, Land Court 2014 MISC 481399-AHS; and Robertson v. Barberry Homes, LLC, Norfolk Superior Court NOCV2014-000129 involving a proposed 40B Comprehensive Permit for land on Moose Hill Road; and that a discussion of the foregoing in open session could compromise the purpose for the executive session; and that the Board shall return to open session at the conclusion of the executive session.

A motion was made by Mr. Zuker, seconded by Mr. Foley, to go into executive session, under G.L. c.30A, §21(b)(3) and (4) regarding the litigation identified and for the purposes and reasons declared by the Board's vice chairman with the Board to return to open session at the conclusion of the executive session.

The vote was **4-0-0 in favor**. (Mr. Zuker – yes; Mr. DeCelle – yes; Ms. Coffey – yes; Mr. Foley – yes)

The Board returned to open session.

6:55 p.m. – Reorganization of the Board

Ms. Murphy joined the meeting at 7:06 p.m.

A motion was made by Mr. DeCelle, seconded by Ms. Coffey, to nominate Mr. Zuker as Chairman.

The vote was **4-0-1 in favor**. (DeCelle, Coffey, Murphy, Foley voting; Zuker abstained)

A motion was made by Mr. Zuker, seconded by Ms. Coffey, to nominate Mr. DeCelle as Vice Chairman.

The vote was **4-0-1 in favor**. (Zuker, Coffey, Murphy, Foley voting; DeCelle abstained)

Mr. Zuker noted that Mr. Craig Hiltz will remain Clerk.

7:00 p.m. – FAK, LLC – Case #09-14

Mr. Zuker read the public hearing notice for FAK, LLC – Case #09-14, with respect to property located at 60 Shufelt Road, Walpole and shown on the Assessors Map as Lot No. 56-31, Residence B Zone, WRPOD 3.

The application is for:

A Special Permit under M.G.L. Ch. 40A, Section 6 and Section 9.4.A of the Zoning Bylaws to allow the proposed reconstruction and expansion of an existing single-family residence. Applicant also seeks determinations under Section 9.2.G (4) and M.G.L. Ch. 40A, Section 6 to allow the demolition of and change to the existing structure.

Mr. Dan Merrikin from Merrikin Engineering, the applicant's engineer, was present and discussed the request for a special permit to demolish a house at 60 Shufelt Road. The applicant purchased the property and would like to tear down the current house and rebuild a new house. The lot is non-conforming and lacks frontage. Under the bylaws, the existing house is considered a conforming structure on a non-conforming lot. The applicant is also asking for a Special Permit. The applicant has submitted plans for the house to be 3,200 square feet. The applicant decided that they did not want to build that house. They actually want it to be smaller, 2,400 square feet instead. The applicant does not have a plot plan for the smaller house but we have provided an aerial photo that shows the smaller house. Mr. Merrikin said that he hopes the Board will agree and provided the Board with a draft decision.

Mr. Zuker wanted to know that the frontage was on this lot.

Mr. Merrikin stated that it was just over 100 feet.

Mr. Zuker read the comment letters from the other boards and departments into the record.

Mr. Merrikin stated that in the draft decision it includes conditions that the applicant would get a new septic system and the house would have a roof run off. The applicant would comply with such conditions.

Mr. Zuker asked if any members in the audience wish to comment on this application.

Mr. Joshua Twohig of 50 Shufelt Road stated that the neighborhood has a handful of children. The house that is currently there is a safety concern. He stated that he would look very kindly on this new house and would be happy to have it in the neighborhood.

Mr. Vernon Soubble of 65 Shufelt Road stated that he would be interested in collaborating with the new owner to share the cost of bringing the town sewer pipe to the two houses.

Mr. Merrikin said that it does seem like the pipe stops just short of the houses. He mentioned that the applicant would reach out to him.

Mr. Zuker said that anything granted by the board would cover both septic or sewer and that Mr. Merrikin should feel free to chat with the neighbors outside of this meeting.

Mr. Zuker wanted to know if the new house would be detrimental to the neighborhood.

Mr. Merrikin stated that the existing structure is a disaster.

Mr. Merrikin said that the house they have submitted complies with all of the regulations. They hope the Board will say that they are ok with the house presented or anything smaller.

Mr. Zuker asked if the smaller house would be conforming to all of the setbacks.

Mr. Merrikin said yes.

Ms. Kelly Crabbe of 55 Shufelt Road asked if there were any other regulations to protect the abutting houses from rodents when they start to work on the current house. She stated that the neighbors have seen quite a few rodents coming out of that house.

Mr. Zuker mentioned that the town has regulations on how demolition should be handled.

Mr. Merrikin stated that the applicant would like to move this along as soon as possible.

Town Counsel Quirk asked if the applicant would be willing to meet with the Board of Health and the Animal Control Officer.

Mr. Merrikin said he would definitely agree to meet with them.

A motion was made by Ms. Murphy, seconded by Ms. Coffey to close the public hearing.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Coffey, Murphy, Foley voting)

A motion was made by Ms. Murphy, seconded by Mr. DeCelle, on behalf of the Applicant, to make a **Determination** pursuant to Section 9.2.G.(4) of the Zoning Bylaw to allow the existing dwelling at 60 Shufelt Road to be demolished and reconstructed as proposed so that the use will not be considered “abandoned.”.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Coffey, Murphy and Foley voting), therefore the **Determination** application is hereby **GRANTED subject to the following conditions**:

CONDITIONS:

- 1) The Applicant shall obtain a demolition permit prior to the commencement of work.
- 2) All demolished materials shall be either reused or disposed of in accordance with local, state, and federal laws and regulations.

REASONS FOR DECISION:

Pursuant to Section 9.2.G.(4) of the Zoning Bylaw (and relevant case law), the Applicant seeks an explicit recognition and **Determination** from the Board of their intention to demolish the existing residential structure for the purposes of preparing the site for an enlarged and reconstructed residential structure. The Applicant intends to proceed with this demolition as a continuance of the existing non-conforming residential use of the site. The Board therefore determined that the proposed demolition is NOT evidence of abandonment of the existing site or use and may proceed in anticipation of the proposed residential structure reconstruction.

A motion was made by Ms. Murphy, seconded by Mr. DeCelle, on behalf of the Applicant, to grant a **Special Permit** under Section 9.4.A of the Zoning Bylaw to allow the proposed reconstruction and expansion of an existing single-family residence on a non-conforming lot at 60 Shufelt Road.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Coffey, Murphy, Foley voting); therefore the application for a **Special Permit** is hereby **GRANTED, subject to the following conditions**:

CONDITIONS:

1. As stipulated by the Applicant at the public hearing, the new house will be in the same location and no larger than shown on the plan entitled “Proposed Structure Plot Plan of Land in Walpole, MA” with a scale of 1”=40’ and a date of April 22, 2014, said plan being prepared by Colonial Engineering Inc., 11 Awl Street, Medway, MA, which was submitted with the application. The Applicant may construct a smaller house provided that a new plot plan is provided to the Building Inspector as is normally required.
2. The Applicant shall comply with the requirements of Section 12.3.A.(3)(d) and provide the Building Inspector with a roof runoff infiltration system design meeting the requirements of the Bylaw. The Applicant shall conduct an on-site soils test in the location of the roof runoff infiltration system.

3. The Applicant shall either connect to municipal sewer or shall comply with Title V regarding requirements for upgrade or replacement of the septic system.
4. As stipulated by the Applicant at the public hearing, the Applicant shall coordinate demolition of the existing structures with the Board of Health, Animal Control Officer, and any other applicable Town departments.

REASONS FOR DECISION

Section 9.5.B of the Zoning Bylaw provides:

A one-family or two-family dwelling shall not be deemed a nonconforming building or use solely due to the lot's deficiency in area or frontage, and the dwelling may be changed, extended, or altered by right (but a single-family dwelling use may not be changed as of right to a two-family use) if otherwise in conformity with the dimensional requirements in Section 6-B. In all other cases, the change, extension or alteration of a building on a nonconforming lot shall require a special permit under Section 9.4.A.

The Board finds that the proposed demolition and construction of a new dwelling on the existing nonconforming lot requires a **Special Permit** under Section 9.4.A. It is the further finding of the Board that the applicant was able to meet the requirements of Section 9.4.A of the Zoning Bylaw in that:

- i. *An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Bylaw by the issuance of a building permit as provided in § 3.1. Any other change, extension, or alteration of an existing nonconforming one-family or two-family dwelling may be permitted provided the Board of Appeals grants a special permit including a determination that such enlargement or extension will not increase the nonconforming nature of the structure, or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.*

In hearing the application, the Board finds that the proposed reconstruction and enlargement of the existing single-family dwelling at the front of the lot is a reasonable and appropriate proposal given the condition of the property and its relationship to surrounding properties. The existing single-family residential structure is in an advanced state of disrepair and the Applicant proposed to demolish it and to construct a new single-family dwelling. The existing structure is not nonconforming pursuant to Section 9.5.B of the Zoning Bylaw because it meets the various setback and structure dimensional requirements of the Bylaw. Thus, the existing structure is considered conforming on a lot that is otherwise nonconforming solely due to insufficient frontage.

As part of this finding, the Board hereby makes specific findings and **Determinations** pursuant to Section 9.4.A of the Zoning Bylaw and M.G.L. Chapter 40A, Section 6, Paragraph 1 that:

- The proposed single-family dwelling reconstruction will not result in a more intensive nonconformity. The nature of the non-conformity relates to insufficient lot frontage, which will not be changed. The nature of the proposed use (single-family residential dwelling) will remain unchanged as well.
- The proposed demolition of the existing structure will resolve an outstanding safety concern due to the advanced state of disrepair of the structure.
- The proposed new single-family residential dwelling is reasonable and appropriate for the neighborhood.

FURTHER FINDINGS

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaw, which requires that:

(1) *Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:*

(a) *Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;*

As discussed above, the proposed work complies with the special permit provisions of Section 9.4.A of the Zoning Bylaw.

(b) *Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;*

The Board finds that the proposed reconstruction of a single-family dwelling will not significantly increase vehicular or pedestrian traffic and this requirement is therefore met.

(c) *Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;*

The Board finds that the proposed reconstruction of a single-family dwelling will not result in a significant increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site) and this requirement is therefore met.

(d) *Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;*

The Board finds that the proposed structure meets the various dimensional requirements of the Zoning Bylaw including lot coverage and that this criterion is therefore met. There are no buffer zone requirements associated with this use.

(e) *Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;*

The Board finds that single-family residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. As such, the Board finds that this criterion is met.

(f) *Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;*

The Board finds that single-family residential uses are not known to be typically associated with noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

(g) *Shall not adversely effect the character of the immediate neighborhood; and*

The Board finds that the property in question lies within an existing single-family residential neighborhood and that the proposed structure is reasonable for the neighborhood. The Board therefore finds that this criterion is met.

(h) *Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.*

The Board finds that the proposed single-family residential structure is appropriate for the Residence B zone, where single-family residential uses are allowed by right. The Board further finds that the new structure replaces an existing single-family residential structure. As such, the Board finds that this criterion is met.

A motion was made by Ms. Murphy, seconded by Mr. DeCelle to let the Chairman sign off on this decision.

The vote was **4-0-1 in favor**. (DeCelle, Coffey, Murphy, Foley voting; Zuker abstained)

7:30 p.m. – Barberry Homes, LLC – Case #21-13 (cont'd from 05/21/14) (Stanton, Zuker, Coffey, Foley)

Ms. Murphy recused herself from this hearing.

Mr. DeCelle left the meeting at 7:34 p.m.

Mr. Zuker read the public hearing notice for Barberry Homes LLC, Case #21-13, with respect to property located at 272 Moose Hill Road, East Walpole, MA and shown on the assessors Map 36 and Lot Nos. 66, 66-1, 62, Residence A Zone.

The application is for:

A Comprehensive Permit under MGL Ch. 40B to allow construction of a 174 unit apartment project containing 25% affordable units on a parcel of land containing 14.33 acres.

Town Counsel Quirk stated that the last time we met on May 21, 2014 we discussed how the applicant had been absent thus far. The applicant has since mentioned that they would be willing to work with the Town of Walpole. The Town provided the applicant with a list of concerns that they saw involving the current application. The applicant has agreed to have their developers look at those concerns and would be willing to meet with the different Boards. The process for the engineers concluded last night. A conference call is scheduled for this Friday with the developer engineers. We can be cautiously optimistic, but we are not sure yet. There are a couple of deadlines that the Town needs to be aware of. Barberry did indicate that they would be willing to grant an extension on the 6/25/14 hearing. Town Counsel Quirk's recommendation is to let the public comment and then meet again. If the applicant mentions that they are not willing to work with the Town, then the board will know that they have all of the public's comments. Hopefully at the next meeting we will have the extension. That way the residents would be able to comment more. There would be a way for there to be a dialog back and forth, any new pieces of information, comments, concerns etc. could be added. The Town could then pass that information on to the applicant's developers. We could then continue for the next couple of weeks. Town Counsel Quirk felt that the Board should keep the public hearing open so the developer can discuss new information and add information if need be. If by June 25, 2014, we do not have any new information then we would be able to close the public hearing.

Mr. Zuker noted that at the last meeting on May 21, 2014 topics of traffic, drainage and density came up. Mr. Zuker opened up the floor to the public for comment.

Mr. Brian Atkinson of 301 Moose Hill Road mentioned that they had lost their appeal with the DEP. He stated that the neighbors of Moose Hill were going to refile an appeal to the courts.

Mr. Zuker read the copy of letter from the Department of Environmental Protection that Mr. Atkinson submitted to the Zoning Board and Conservation Commission.

Ms. Judi Barrett from RKG Associates, Inc. stated that if Town Counsel would like, she can provide specific language for the play space that had been previously discussed.

Mr. Zuker stated that the Board would be more than happy to have Ms. Barrett's help regarding the play space. He felt that the neighbors would greatly appreciate that.

Ms. Barrett stated that she would email both Stephanie Mercandetti and Town Counsel Quirk with the specific verbiage regarding the play space.

Mr. Zuker stated that it would be added to the record.

Mr. Atkinson wanted to know that the deadline was.

Ms. Quirk stated that the Board does not want to get close to the deadline.

Mr. Zuker said that he would imagine if by the next meeting, the board had not heard anything from the applicant then the Board would close the Public Hearing and render a decision.

Ms. Quirk mentioned that with 40B comprehensive permits, the Town has six months to hold a hearing. Once the public hearing is closed, the Town has 40 days from the close of the hearing to submit a decision.

Mr. Zuker stated that as long as the Board closes the Public Hearing then they have 40 days from the close of the hearing to submit a decision.

Ms. Quirk asked the Board if they would authorize for her to share the draft decision. It would be a public record. That way the neighbors could look at it. It would give the neighbors a chance to comment on the draft decision.

Mr. Zuker, Ms. Coffey and Mr. Foley all stated that they did not have a problem with Ms. Quirk sharing the draft decision with the neighbors.

Mr. Zuker mentioned that he is remaining optimistic that the applicant, the Board and the neighbors will have some discussion. He is holding out hope that the applicant will come to a ZBA meeting. If they do not then the board will proceed accordingly. He stated that the process has not been perfect but that they have received a lot of information.

A motion was made by Mr. Zuker, seconded by Ms. Coffey, to continue the hearing to Wednesday, June 25, 2014 at 7:00 p.m.

The vote was **3-0-0 in favor**. (Zuker, Coffey, Foley voting)

There being no further business, a motion was made by Mr. Zuker, seconded by Ms. Coffey, to adjourn the meeting at 8:03 p.m.

The vote was **3-0-0 in favor**. (Zuker, Coffey, Foley voting)

Craig W. Hiltz
Clerk

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Minutes were approved on September 24, 2014.